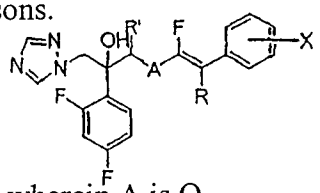
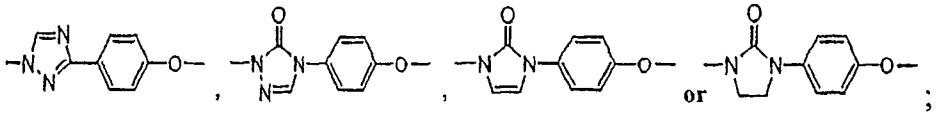
REMARKS

The Examiner has rejected claims 1-3 under 35 U.S.C. 103(a) based on Itoh (U.S Patent No. 5,371,101) in view of Kim (U.S. Patent No. 6,552, 080). Applicant respectfully traverses this ground of rejection for the following reasons.

The subject invention is directed to an azole derivative of 

or a pharmaceutically acceptable salt, an isomer or an ester thereof, wherein A is O,  ;R is H or CF3; R' is H or C1-14 alkyl; X is halogen, C1-4 alkyl, alkoxy or 3,4-dioxyalkylene.

The purpose of the present invention is to provide a compound having a high anti-fungal activity against a wide spectrum of pathogenic fungi which also exhibits low toxicity. Itoh discloses several antifungal compounds which include the core structure identical to that of the compound recited in claim 1. However, as the Examiner admits, the two inventions are distinct from each other in view of the substitution of the polyfluoro groups which are attached to phenol (A).

Kim discloses a compound having antifungal activity which has a fluorovinyl moiety useful for protecting crops from fungal diseases. However, the core structures of the compound of Kim and Itoh are quite different from each other. One of ordinary skill in the art would not have had any teaching suggestion or motivation to modify the compound of Itoh with a "a fluorovinyl..moiety..useful for protecting crops from fungal diseases" (Kim abstract). Clearly, the fungicidal compound of Kim is described as useful only for treating crops, not humans. Therefore, one of ordinary skill in the art searching for a fungicidal with low toxicity would not look to a compound that was used for crops, since fungicides for crops are not normally low in toxicity. Accordingly, one of ordinary skill in the art would not have found it obvious to combine the references of Itoh and Kim to modify the core structure of Itoh with a phenol

and, then, further modify that phenol as disclosed in Kim.

Due to such constitutional differences, the inventive compounds have high antifungal activity against a wide spectrum of pathogenic fungi. (*See* page 48, line 1 to page 50, line 12 of the Specification), and low toxicity to minimize hepatic toxicity and toxicity of oral administration. (*See* page 50, line 14 to page 51, line 20 of the Specification). Accordingly, the present invention would not have been obvious to one of ordinary skill in the art based on the disclosure of Itoh in view of Kim. Therefore, the rejection of Claim 1 under 103(a) should be withdrawn and the present application forwarded to issue.

Claim 2 was rejected in view of Ito and Kim and further in view of Boyle. The Examiner cites Table 5 of the Boyle reference as disclosing compounds having a nonoxygenated triazole attached to the instant core and having an antifungal activity. As can be seen by a review of Boyle, the majority of those compounds in Table 5 were not considered to be appropriate and efficacious for in vivo use. Specifically, Boyle, page 94, para 1, referencing compounds numbered 21 and 24; page 95+, last line of paragraph referencing compound 30; page 98, 2nd para referencing compounds 21, 31, 32, 20 and 34. Accordingly, one of ordinary skill in the art would never have utilized the compounds or teachings of Boyle to modify the primary and secondary references of Itoh and Kim. Therefore, Applicants respectfully submit that the rejection of Claim 2 under 35 USC 103(a) should be withdrawn and the application be forwarded to issue.

CONCLUSION

Based on the foregoing remarks, Applicant submits that the instant application is in condition for allowance and should be forwarded to issue.

Respectfully submitted,

Dated: October 3, 2008

By: _____
Eugene Lieberstein
Registration No. 24,645

CUSTOMER NO.: 79681

BAKER & HOSTETLER, LLP
45 Rockefeller Plaza
New York, NY 10111
Phone: 212-589-4644

CERTIFICATE OF TRANSMISSION

I hereby certify that this Response is being submitted to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 via EFS-Web on October 3, 2008.

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Audrey de Souza